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gressional elections. Chairman Wilbur D. Mills, of Arkansas, ruled that the amendment was not germane to the joint resolution, since nothing in the resolution pertained to the apportionment or election of Representatives.[20]

Unequal Representation in Primary

§ 3.7 The House refused to overturn an election in a state with a "county unit" primary election system, where less populous counties were entitled to a disproportionately large electoral vote for nominees.

On Apr. 27, 1948, the House adopted without debate House Resolution 553, dismissing the Georgia election contest of *Lowe* v *Davis*.[1]

Parliamentarian's Note: The House in this case refused to invalidate the Georgia "county unit" system for primaries, requiring use of county electoral votes rather than popular votes for choosing nominees. Under the system each candidate was required to receive a majority of county unit votes for nomination, and unit votes were allotted in favor of less populous counties rather than strictly by population.[2]

§ 4. Failure of States to Redistrict

Congressional redistricting is a legislative function for the several states.[3] The failure of a state in this regard may arise either through neglect to pass any new districting legislation after reallocation of House seats or population changes reflected in the census, or through enactment of legislation which does not satisfy the requirements of the Constitution, federal statutes, or state law.[4]

Where a state's districting plan is defective, the remedy lies either with Congress or with the courts. Since Congress not only has the

20. *Id.* at pp. 25983, 25984.

1. 94 CONG. REC. 4902, 80th Cong. 2d Sess.

See also Ch. 9, infra, for election contests generally.

2. See the elections committee report in the case, H. REPT. NO. 1823, 80th Cong. 2d Sess. (1948). The Supreme Court later invalidated the use of the "county unit" system. *Gray* v *Sanders*, 372 U.S. 368 (1963).

3. For discussion of state responsibility for congressional districting, see §§ 1, 3, supra.

4. For past and present congressional districting requirements, see § 3, supra.

power to enact federal standards for congressional districts,[5] but also is the sole judge of the elections and returns of its Members,[6] the House has the power to investigate the congressional districting plan of any state and to deny seats to Members from states which have drawn defective district lines or no district lines at all.[7] There appears to be no doubt that Congress has the power to compel a state to redraw its congressional district lines in accordance with existing law.[8] However, the House has declined on at least three occasions to deny seats to Members from states in violation of federal districting statutes.[9]

The federal courts and on some occasions the state courts have taken affirmative action to correct a failure of a state to redistrict.[10] In 1966, the U.S. Supreme Court first allowed a federal district court to itself draw congressional district lines in a state where the existing districting legislation was unconstitutional.[11] On the subject of judicial interference with the traditionally legislative function of congressional districting, the Court has stated:

> Legislative reapportionment is primarily a matter for legislative deter-

5. See U.S. Const. art. I, § 4, clause 1. For the relationship of that clause to federal districting standards, see § 3, supra.

6. U.S. Const. art. I, § 5, clause 1.

7. However, a court finding that a particular state districting plan is invalid does not cast doubt upon the validity of elections in which Congressmen then serving have been elected, or upon their right to serve out terms for which elected. *Grills* v *Branigin*, 284 F Supp 176 (S.D. Ind. 1968), aff'd, 391 U.S. 364 (1969).

8. "And in Colgrove v. Green, 328 U.S. 549 (1946), no Justice of this court doubted Congress' power [under U.S. Const. art. I, § 4] to rearrange the congressional districts according to population. . . ." *Oregon* v *Mitchell*, 400 U.S. 112, 121 (1970).

9. See 1 Hinds' Precedents §§ 310, 313; 6 Cannon's Precedents § 43.

10. See Hearings on Congressional Districting (H.R. 8953 and related proposals), subcommittee No. 5, House Committee on the Judiciary, 92d Cong. 1st Sess., pp. 141–160.

Judicial intervention in the area of districting was forecast: "[T]hat the Constitution casts the right to equal representation in the House in terms of affirmative congressional power should not preclude judicial enforcement of the right in the absence of legislation. Such judicial action is commonplace in other areas." Lewis, Legislative Apportionment in the Federal Courts, 71 Harv. L. Rev. 1057, 1074 (1958).

Although the courts may review districting, they have no power over the allocation of seats by Congress to the states. See *Saunders* v *Wilkins*, 152 F2d 235 (4th Cir. 1945), cert. denied, 328 U.S. 870, rehearing denied, 329 U.S. 825 (1946).

11. *Maryland Citizens' Committee for Fair Congressional Districting* v *Tawes*, 253 F Supp 731 (D. Md. 1966), aff'd sub nom, *Alton* v *Tawes*, 384 U.S. 315 (1966).

mination and consideration and judicial relief becomes appropriate only when the legislature fails to reapportion according to Federal constitutional requisites in timely fashion after having had adequate opportunity to do so.[12]

Congressional attempts to restrict the power of the judiciary over congressional districting have not been successful.[13]

A federal court may retain jurisdiction of districting matters pending appropriate action by the state legislature.[14] A federal court may postpone election processes to provide more time for redistricting,[15] but has allowed elections to be held under invalid districting where there was no other alternative.[16]

On several occasions, state courts have ordered congressional districting plans into effect.[17]

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12. *Dinis* v *Volpe,* 264 F Supp 425 (D. Mass. 1967), aff'd, 389 U.S. 570 (1968) (per curiam).

13. On Nov. 8, 1967, the Senate considered a conference report on H.R. 2508, to require the establishment of compact and contiguous congressional districts, and for other purposes. A portion of the bill, as reported from conference, provided that no state could be required to redistrict prior to the 19th federal decennial census unless the results of a special federal census were available for use therein. See 113 CONG. REC. 31708, 90th Cong. 1st Sess. The language of the bill and its effect on the power of the courts to compel congressional districting by the states in accordance with the "one man-one vote" principle, was extensively debated as to its clarity and constitutionality. For challenges to the constitutionality of the provision, see pp. 31696–31702. For remarks in support of its constitutionality, see pp. 31707, 31708. The Senate rejected the conference report (at p. 31712).

14. *Grills* v *Branigin,* 284 F Supp 176 (S.D. Ind. 1968), aff'd, 391 U.S. 364 (1969).

15. See *Toombs* v *Fortson,* 241 F Supp 65 (N.D. Ga. 1965), aff'd, 384 U.S. 210 (1966) (per curiam); *Butterworth* v *Dempsey,* 237 F Supp 302 (D. Conn. 1965).

16. *Skolonick* v *Illinois State Electoral Board,* 307 F Supp 698 (N.D. Ill, 1969). See also *Legislature* v *Reinecke.* 99 Cal. Rptr. 481, 492 P.2d 385 (1972).

17. See *Legislature* v *Reinecke,* 99 Cal. Rptr. 481, 492 P.2d 385 (1972); *People ex rel. Scott* v *Kerner,* 33 Ill. 2d 460, 211 N.E.2d 736 (1965).